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Abstracts from the Criminal Law Interest Group

The shifting contexts of criminal justice reform –from decriminalisation to the 'uncivil' politics of law and order and the challenges of 'popular punitiveness

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Abstract
The paper will offer an overview of criminal justice reform in the Australian context from the 1970s to the present. Attention will be given to the shifting political contexts, the continuities and the discontinuities. Much of the reform momentum in the 1970s and early 1980s was driven by social movement critiques of criminal justice practices and agencies on grounds of unfairness, abuse and oppression (around issues such as police verbal, police killings, prison bashings, deaths in custody, domestic violence, Indigenous over-representation etc.) leading to decriminalisation, the curbing of abusive practices such as police verbal and prison bashings, improvements in defendants' and prisoners' rights, an attempt to reduce the length of prison terms and provide alternatives to imprisonment. From around the mid-1980s onwards the reform momentum was driven much more by concerns that the criminal justice system is soft on crime, does not adequately represent the interests of victims, and delivers insufficient punishment; leading to reforms which create new offences, extend police powers, target youth and other groups, reduce defendants rights, seek to limit and structure judicial sentencing discretion and deliver longer sentences and harsher punishment. The paper considers the development of an "uncivil politics and law and order" dating from the mid 1980s, the emergence of what is increasingly termed "popular punitiveness" or the "new" punitiveness, and argues that popular punitiveness throws up certain fundamental challenges to traditional modes of criminal justice reform, such as the rise of a public voice, the declining influence of social expertise and 'mediatized' forms of communication, all of which need to be more seriously confronted.

A Retributivist Argument Against Punishment

David Wood

Abstract
The paper puts forward a retributivist argument against punishment. This may seem strange. Retribution is usually put forward as an argument FOR punishment, not against. The argument concerns the link between retribution and hard treatment. Establishing this requires, first, some ranking of crimes according to comparative seriousness, secondly, some ranking of penalties according to relative severity, and thirdly, some way of reading off one ranking or scale against the other. Much attention has been focused on the third requirement. But I suggest that the second is the real problem. This arises from the

distinction between a hypothetical and actual scale of penalties. There are no resources within retributive theory for 'anchoring' a penalty scale, for selecting the most serious penalty. And without this, the 'ceiling' of permissible punishment or hard treatment lies on the floor, of no punishment or hard treatment at all. Five attempts to avoid this conclusion are examined, and all dismissed.

A Voyage through the proposed and existing voyeurism offences in New Zealand, United Kingdom, Canada and Australia Kelley Burton Contemporary voyeurism involves using modern technology, such as cameras on mobile phones and covert miniature cameras, to observe other people undressing, showering, using the toilet or participating in sexual activities, for the purpose of sexual gratification. It is also referred to as upskirt, down-blouse, intimate covert filming and video voyeurism. To deter contemporary voyeurism, the New Zealand Law Reform Commission recommended the introduction of three new criminal offences, which target making, publishing and possessing a voyeuristic recording. This paper will examine the scope of these three proposed voyeurism offences and compare them with the existing voyeurism offence in the United Kingdom and the proposed voyeurism offences in Canada and Australia.

International Issues in Addressing Wrongful Conviction

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Abstract
The wrongful conviction of factually innocent people has most recently been highlighted through the increasing number of DNA exonerations in the United States. Wrongful conviction, is however an international problem. This paper looks at causes, correction and prevention of wrongful conviction, from an international perspective and with particular focus on Australia, England, Canada and the United States.

Consenting to Bodily Harm

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Abstract
This paper examines the current law on the defence of consent to bodily harm in Australia, New Zealand and England. It argues for individualistic libertarianism to hold sway over state paternalism in this area of the law, and suggests that the Indian Penal Code provisions on consent could serve as a model.